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MEMORANDUM

Department of Information Services

To: Honorable Mayor and City Council

Through: Charles Lawson, Interim City Manager

From: Bill Marion, Information Services Director

Subject: Cable TV Franchise Renewal

Date: June 13, 2005

This report provides a summary of the activities related to renewal of the Comcast Cable TV franchise. The initial franchise was granted in 1983 and has been assumed by several operators with Comcast now holding the franchise. The latest information provided to the City indicates that Comcast has 10,521 subscribers in the City or approximately 61% of the households. Cable franchises and renewals are in large governed by federal law and in particular the Cable Consumer Protection Act of 1992 and the Telecommunications Act of 1996. This legislation specifies two methods for franchise renewal, the Informal and Formal processes.

In the Informal process, the franchise holder and the local jurisdiction simply negotiate an agreement. If an agreement cannot be reached, both parties must then revert to the Formal process as defined by Section 546 of the Cable Act (47 U.S.C. 546). While the Informal process is less involved, it does not provide the required information should an agreement not be reached and the parties must revert to the Formal process. The Formal process involves the following steps:

- Notification from the Franchise holder
- Action from the Jurisdiction and a Needs Assessment
- Proposal of Franchise
- Preliminary Decision
- Administrative Hearing
- Judicial Review

While the Formal process is more involved and costly, it does ensure that the necessary steps have been taken to justify a denial of the renewal if needed. It also provides a mechanism for public input, a detailed review of the operator's performance and a review of the cable system infrastructure. In 2003 Council directed staff proceed with the Formal renewal process and extended the franchise through April of 2005. Since that time, the actions below have been completed:

- Review of the Telecommunications Master Plan
- Technical review of the cable system
- Survey of subscribers and non-subscribers
- Public Meetings
- Solicitation of input from the Milpitas Unified School District

- Franchise Fee Desk Audit
- Preparation of a Needs Assessment Document
- Preparation of a Draft Franchise
- Franchise Negotiation

The Needs Assessment was used to identify issues with the current franchise and served as a basis for the development of a new franchise. A summary of the major findings of the Needs Assessment is included below. This information was used to initiate corrective actions for items of non-compliance and to draft the new franchise. The following specific findings include the resolution of each either as a corrective action or as a provision of the proposed franchise agreement:

Customer Service Provisions

The franchise renewal should contain provisions for customer service to include appointments for installations and service, answering of telephone inquires, response to billing issues, and response to service outages. The franchise holder should maintain a convenient local office for service and inquires. To the extent allowed by Federal law, the City should ensure a low cost, basic level of service is available. The franchise hold should take steps to ensure changes in rates and programming are more effectively communicated to subscribers.

The proposed franchise incorporates the customer service standards specified by the Federal Communication Commission (FCC). These include targets for telephone inquiry answer times, time to begin correction of service outages, installation appointment times, and timeframes for applying subscriber credits. Violation of these standards can result in subscriber credits, or the imposition of liquidated damages. The franchise holder is obligated to track and report service metrics quarterly. A local office will be maintained for bill payment and service inquiries. As controlled by Federal Law, a basic level of service will be provided at or below the rate set by the FCC. All changes in rates or programming are to be communicated to subscribers at least 30 days in advance and subscribers are to be advised annually of:

- Products and Services offered;
- Prices and options for programming Services and conditions of subscription to programming and other Services;
- Installation and Service maintenance policies;
- Instructions on how to use the Cable Service;
- Channel positions of the programming carried on the System; and
- Billing and complaint procedures, including the address and telephone number of the City.

Channel Line Up

The franchise holder should provide a channel line-up or "TV guide" feature similar to those found in other local communities. This feature could be used to communicate programming and rate changes.

Under the proposed franchise, an on-screen channel line up will be provided.

Service Outages

The franchise should contain provisions for corrections of service outages and include credits for outage periods. The franchise holder should provide reports indicating the number of outages reported by subscribers.

As mentioned above, the proposed franchise includes provisions for correction of service outages and credits for outages. "Grantee will begin working on "Service Interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. Grantee must begin actions to correct other Service problems the next business day after notification of the Service problem."

In terms of credit for service outages:

> "Upon request, Subscribers shall be credited pro rata for service interruptions"
>
> "Grantee shall provide City with a quarterly compliance report, which shall describe in detail Grantee's compliance with each term of this section. This report shall include total calls received and total reports of service outages."

Compliance to State and Local Safety Codes

The franchisee should make correction to all the grounding issues identified in the technical review and institute a program to review all installations within the City. All new installations should be made to meet applicable State and local codes.

Comcast corrected all items identified in the technical review, completed a review of 17, 090 total dwelling units, and corrected a total of 11,686 items in Milpitas. Additionally, Comcast has instituted a quality control program that includes regular inspections of new installations to ensure compliance with applicable building and safety codes. The proposed franchise requires that all new installation be in compliance with applicable codes. Should there be uncorrected violations of building and safety codes, liquidated damages would apply.

Additional PEG Channels

Based on the needs identified by public input and the Milpitas Unified School District, separate channels for Public and Educational access should be made available. Necessary infrastructure should be provided to allow broadcast of programming on these channels.

Under the proposed franchise, an additional shared channel for Educational and Public access would be provided. In total, grants of $540,000 would be provided for Educational and Public access support. These grants would fund the conversion of a classroom to a studio and the purchase of studio equipment for the shared facility. Should the shared channel meet specified usage criteria, a third channel will be provided on request.

Local Public Access Capability

Provisions should be made for local facilities for the production and broadcast of programming produced by members of the public.

As per the above, a shared Public Access facility would be provided through a partnership with the Milpitas Unified School District. This arrangement will require a separate agreement between the City and the School District. In concept, the channel would be used for educational purposes during the day and for public access on nights and weekends.

Cultural Programming

While it is acknowledged that Federal law allows the franchisee wide latitude in programming decisions, it is highly recommended that the franchise holder review their current programming and consider the addition of programming that will meet the needs of the diverse cultures within the City. Specific requests included Spanish, Chinese and Tagalog programming that is available on other cable systems in the area.

While programming decisions are not within the purview of local franchising authorities, Comcast will be providing nine additional channels of international programming to digital subscribers at no additional charge to address the cultural needs of the Milpitas franchise.

Emergency Broadcast Capability

The franchise holder should ensure the capability exists for the City to initiate system wide emergency messages on all channels.

This capability will be available through the countywide emergency alert system.

The combination of the franchise renewal and the corrective actions to date address the issues identified in the Needs Assessment. The specific language of the franchise agreement has been updated to incorporate legislative changes since the adoption of the original franchise in 1983. In addition to the provisions listed above, the City will continue to receive a 5% franchise fee payment each quarter as allowed by Federal law. The City Attorney has reviewed the franchise agreement and is preparing an agreement for the construction and operation of the PEG studio.

The Telecommunications Commission has been involved throughout the renewal process and has reviewed the franchise document and recommends Council approval. In particular, Commissioner Dinesh Gupta and Commissioner Paul Peterson have contributed greatly to developing the concept of a shared Educational and Public access channel and the design of the studio facility. Staff and the Telecommunications Commission will have a short presentation and will be available to answer questions.

CABLE TELEVISION FRANCHISE ORDINANCE

FOR THE

CITY OF MILPITAS, CALIFORNIA

AND

COMCAST OF CALIFORNIA/COLORADO/FLORIDA/OREGON, INC.

June 2005

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ORDINANCE NO. _____

AN ORDINANCE GRANTING A FRANCHISE TO COMCAST OF CALIFORNIA/COLORADO/FLORIDA/OREGON, INC., TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE SYSTEM IN THE CITY OF MILPITAS, CALIFORNIA SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHTS-OF-WAY AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS HEREIN;

The City Council of the City of Milpitas, California ordains:

STATEMENT OF INTENT AND PURPOSE

City intends, by the adoption of this Franchise, to bring about the further development of a Cable System, and the continued operation of it. Such development can contribute significantly to the communication needs and desires of the residents and citizens of City and the public generally. Further, City may achieve better utilization and improvement of public services and enhanced economic development with the development and operation of a Cable System.

Adoption of this Franchise is, in the judgment of the City Council, in the best interests of City and its residents.

FINDINGS

In the review of the request for renewal by Grantee and negotiations related thereto, and as a result of a public hearing, the City Council makes the following findings:

1. Grantee's technical ability, financial condition, legal qualifications, and character were considered and approved in a full public proceeding after due notice and a reasonable opportunity to be heard;

2. Grantee's plans for constructing, upgrading, and operating the Cable System were considered and found adequate and feasible in a full public proceeding after due notice and a reasonable opportunity to be heard;

3. The Franchise granted to Grantee by City complies with the existing applicable state statutes, federal laws and regulations; and

4. The Franchise granted to Grantee is nonexclusive.

SECTION 1.
SHORT TITLE AND DEFINITIONS

1. Short Title. This Franchise Ordinance shall be known and cited as the Cable Television Franchise Ordinance.

2. Definitions. For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number, and words in the plural number include the singular number. The word "shall" is always mandatory and not merely directory. The word "may" is directory and discretionary and not mandatory. Words not defined shall be given their common and ordinary meaning.

   a. "Applicable Laws" means any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable by any governmental authority.

   b. "Basic Cable Service" means any Service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the Franchise to be carried on the basic tier. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. § 543(b)(7).

   c. "Cable Service" or "Service" means (A) the one-way transmission to Subscribers of (i) Video Programming or (ii) Other Programming Service, and (B) Subscriber interaction, if any, which is required for the selection or use of such Video Programming or Other Programming Service. Cable Service as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522(6).

   d. "Cable System" or "System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within a community, but such term does not include:

      i. a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;

      ii. a facility that serves Subscribers without using any public Right-of-Way;

      iii. a facility of common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. § 201 et seq., except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;

iv. an open video system that complies with 47 U.S.C. § 573; or

v. any facilities of any electric utility used solely for operating its electric utility systems.

e. "Channel" or "Cable Channel" means the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering an analog television Channel as defined by the FCC.

f. "City" means City of Milpitas, a municipal corporation, in the State of California, acting by and through its City Council, or its lawfully appointed designee.

g. "City Council" means the governing body of the City of Milpitas, California.

h. "Converter" means an electronic device which converts signals to a frequency acceptable to a television receiver of a Subscriber and by an appropriate selector permits a Subscriber to view all Subscriber signals included in the Service.

i. "Drop" means the cable that connects the ground block on the Subscriber's residence or institution to the nearest feeder cable of the System.

j. "FCC" means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

k. "Franchise" or "Cable Franchise" means this franchise ordinance and the regulatory and contractual relationship established hereby.

l. "Franchise Fee" includes any tax, fee, or assessment of any kind imposed by the City or other governmental entity on Grantee or Subscriber, or both, solely because of their status as such. It does not include any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable Subscribers); capital costs which are required by the Franchise to be incurred by Grantee for public, educational, or governmental access facilities; requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or any fee imposed under Title 17 of the United States Code.

m. "Grantee" is Comcast of California/Colorado/Florida/Oregon, Inc., its lawful successors, transferees or assignees.

n. "Gross Revenue" means any and all cash, credits, property or consideration of any kind or nature that constitutes revenue in accordance with Generally Accepted Accounting Principles and that arise from, are attributable to, or are in any way derived directly or indirectly by the Grantee or its Affiliates, or by any other entity that is a cable operator of Grantee's Cable System, from the operation of

the Grantee's Cable System to provide Cable Services, except as hereinafter specifically excluded. Consistent with the foregoing, the following, without limitation, shall be included in Gross Revenues to the extent derived from the operation of the Grantee's Cable System to provide Cable Services in the City: Monthly fees collected from Subscribers for any basic, optional, premium, per-channel, per-program service, or cable programming service; installation, disconnection, reconnection, and change-in-service fees; revenues from rental or sales of converters or other equipment; fees from third party unaffiliated programmers for leased access programming; advertising revenues; revenues from the sale or carriage of other Cable Services; and revenues from home shopping channels. Gross revenues shall not include any taxes on services furnished by a Grantee which are imposed directly on any Subscriber or User by any governmental unit and which are collected by Grantee on behalf of said governmental unit. Gross Revenues shall not include (i) any compensation awarded to Grantee based on the City's condemnation of property of Grantee; (ii) any uncollected receipts (*i.e.*, "bad debt"), provided, however, that all or part of any such actual bad debt that is written off but subsequently collected shall be included in Gross Revenue in the period collected; (iii) revenues from program guides; (iv) revenues from tower leases.

o. "Installation" means the connection of the Cable System from feeder cable to the point of connection including Standard Installations and custom Installations with the Subscriber Converter or other terminal equipment.

p. "Normal Business Hours" means those hours during which most similar businesses in City are open to serve customers. In all cases, "Normal Business Hours" must include some evening hours, at least one (1) night per week and/or some weekend hours.

q. "Normal Operating Conditions" means those Service conditions which are within the control of Grantee. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, severe or unusual weather conditions, and interruptions associated with upgrading the cable system. Those conditions which are ordinarily within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance of the Cable System.

r. "Other Programming Service" means information that a cable operator makes available to all Subscribers generally.

s. "Pay Television" means the delivery over the System of pay-per-channel or pay-per-program audio-visual signals to Subscribers for a fee or charge, in addition to the charge for Basic Cable Service or Other Programming Services.

t. "PEG" means public, educational and governmental.

u. "Person" is any Person, firm, partnership, association, corporation, company, limited liability entity or other legal entity.

v. "Right-of-Way" or "Rights-of-Way" means the area on, below, or above any real property in City in which the City has an interest including, but not limited to any street, road, highway, alley, sidewalk, parkway, park, skyway, or any other place, area, or real property owned by or under the control of City, including other dedicated Rights-of-Way for travel purposes and utility easements.

w. "Right-of-Way Ordinance" means any ordinance codifying requirements regarding regulation, management and use of Rights-of-Way in City, including registration and permitting requirements.

x. "Service Area" or "Franchise Area" means the entire geographic area within the City as it is now constituted or may in the future be constituted.

y. "Service Interruption" means the loss of picture or sound on one (1) or more Cable Channels.

z. "Standard Installation" means any residential installation which can be completed using a Drop of one hundred fifty (150) feet or less.

aa. "Subscriber" means any Person who lawfully receives Cable Service via the System consistent with terms of Grantee's terms and conditions then in force. In the case of multiple office buildings or multiple dwelling units, the "Subscriber" means the lessee, tenant or occupant not the building owner.

bb. "Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

SECTION 2.
GRANT OF AUTHORITY AND GENERAL PROVISIONS

1. Grant of Franchise. This Franchise is granted pursuant to the terms and conditions contained herein. Failure of Grantee to provide a System as described herein, or meet the obligations and comply with all provisions herein, shall be deemed a violation of this Franchise.

2. Grant of Nonexclusive Authority. This Franchise shall be nonexclusive, and City reserves the right to grant use of said Rights-of-Way to any Person at any time during the period of this Franchise for the provision of Cable Service

   a. The Grantee shall have the right and privilege, subject to the permitting and other lawful requirements of City ordinance, rule or procedure, to construct, erect, and maintain, in, upon, along, across, above, over and under the Rights-of-Way in City a Cable System. The System constructed and maintained by Grantee or its

agents shall not interfere with other uses of the Rights-of-Way. Grantee shall make use of existing poles and other above and below ground facilities available to Grantee to the extent it is technically and economically feasible to do so.

b. Notwithstanding the above grant to use Rights-of-Way, no Right-of-Way shall be used by Grantee if City determines that such use is inconsistent with the terms, conditions, or provisions by which such Right-of-Way was created or dedicated, or with the present use of the Right-of-Way.

3. Competitive Equity.

a. The Grantee acknowledges and agrees that the City reserves the right to grant one or more additional franchises to provide Cable Service within the Franchise Area; provided, however, that no such franchise agreement shall contain terms or conditions more favorable or less burdensome to the competitive entity than the material terms and conditions herein, including, but not limited to: franchise fees; insurance; system build-out requirements; security instruments; public, education and government access channels and support; customer service standards, required reports and related record keeping; and notice and opportunity to cure breaches. If any such additional or competitive franchise is granted by the City which, in the reasonable opinion of the Grantee, contains more favorable or less burdensome terms or conditions than this franchise, the City agrees that it shall amend this franchise to include any more favorable or les burdensome terms or conditions in a manner mutually agreed upon the City and Grantee.

b. In the event an application for a new cable television franchise is filed with the City proposing to serve the Franchise Area, in whole or in part, the City shall serve or require to be served a copy of such application upon any existing Grantee or incumbent cable operator by registered or certified mail or via nationally recognized overnight courier service.

c. In the event the City enters into a franchise, permit, license, authorization or other agreement of any kind with any other Person or entity other than the Grantee to enter into the city's Public Rights of Way for the purpose of constructing or operating a Cable System or providing Cable Service to any part of the Franchise Area, the material provisions thereof shall be comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

4. Lease or Assignment Prohibited. No Person may lease Grantee's System for the purpose of providing Cable Service until and unless such Person shall have first obtained and shall currently hold a valid franchise or other lawful authorization containing substantially similar burdens and obligations to this Franchise. Any assignment of rights under this Franchise shall be subject to and in accordance with the requirements of Section 9 of this Franchise. This provision shall not prevent Grantee from complying with any commercial leased access requirements or any other provisions of Applicable Law.

5. Franchise Term. This Franchise shall be in effect for a period of fifteen (15) years from the date of execution by City, unless sooner renewed, revoked or terminated as herein provided.

6. Previous Franchises. Upon acceptance by Grantee as required by Section 13.2 herein, this Franchise shall supersede and replace any previous ordinance or other authorization granting a franchise to Grantee.

7. Compliance with Applicable Laws, Resolutions and Ordinances.

   a. The terms of this Franchise shall define the contractual rights and obligations of Grantee with respect to the provision of Cable Service and operation of the System in City. However, Grantee shall at all times during the term of this Franchise be subject to all lawful exercise of the police power rights of City. This Franchise may also be modified or amended with the written consent of City and Grantee as provided in Section 12.3 herein.

   b. Grantee shall not, through the application of City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way, which exceed burdens on similarly situated Rights-of-Way users.

   c. In the event of any conflict between this Franchise and any City ordinance or regulation which addresses usage of the Rights-of-Way and the Grantee cannot determine how to comply with any Right-of-Way requirement of City, whether pursuant to this Franchise or other requirement, Grantee shall immediately provide written notice of such question, including Grantee's proposed interpretation, to City, in accordance with Section 2.9. City shall provide a written response within fourteen (14) days of receipt indicating how the requirements cited by Grantee apply. Grantee may proceed in accordance with its proposed interpretation in the event a written response is not received within seventeen (17) days of mailing or delivering such written question.

8. Rules of Grantee. Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable said Grantee to exercise its rights and perform its obligations under this Franchise and to assure uninterrupted Service to each and all of its Subscribers; provided that such rules, regulations, terms and conditions shall not be in conflict with Applicable Laws.

9. Territorial Area Involved. This Franchise is granted for the corporate boundaries of City, as they exist from time to time. Access to Cable Service shall not be denied to any group of potential cable Subscribers because of the income of the residents of the potential cable Subscribers or the area in which such group resides.

10. Written Notice. All notices, reports, or demands required to be given in writing under this Franchise shall be deemed to be given when delivered personally to any officer of Grantee or City's manager of this Franchise or forty-eight (48) hours after it is deposited

in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

If to City: City Manager
455 Calaveras Boulevard
Milpitas, CA 95035

If to Grantee: Director of Government Affairs
South Bay Area
Comcast of California/Colorado/Florida/Oregon, Inc.

1900 South 10th Street
San Jose, CA 95112

Such addresses may be changed by either party upon notice to the other party given as provided in this section.

SECTION 3.
CONSTRUCTION STANDARDS

1. Registration, Permits, Construction Codes, and Cooperation.

   a. Grantee shall comply with the construction requirements of local, state and federal laws.

   b. Grantee agrees to obtain a permit as required by City prior to removing, abandoning, relocating or reconstructing, if necessary, any portion of its facilities. Notwithstanding the foregoing, City understands and acknowledges there may be instances when Grantee is required to make repairs, in compliance with federal or state laws, that are of an emergency nature. Grantee will notify City prior to such repairs, if practicable, and will obtain the necessary permits in a reasonable time after notification to City.

   c. Reimbursement paid through the permitting process is separate and in addition to any other fees included in the Franchise. Grantee, at the time of or prior to applying for permits, shall provide City with a description of the facility to be provided by the Grantee in sufficient detail for City to determine compliance with the Franchise and Applicable Laws.

   d. City may issue reasonable policy guidelines to all grantees to establish procedures for determining how to control issuance of engineering permits to multiple grantees for the use of the same Rights-of-Way for their facilities. Grantee shall cooperate with City in establishing such policy and comply with the procedures established by the City Manager or his or her designee to coordinate the issuance of multiple engineering permits in the same Right-of-Way segments.

e. Grantee shall first obtain the written approval of City prior to commencing any construction or reconstruction on the Rights-of-Way and public places of City. Such approval shall not be unreasonably withheld. In the event that the City has not responded to the Grantee's permit application in writing within 30 days, Grantee may request a meet and confer with the City to determine the status of the request.

f. Failure to obtain permits or comply with permit requirements shall subject Grantee to all enforcement remedies available to City under Applicable Laws or this Franchise.

g. Grantee shall meet with developers and be present at pre-construction meetings to ensure that the newly constructed Cable System facilities are installed in new developments within City in a timely manner.

h. Upon written request, Grantee shall provide a written status report to City every ninety (90) days regarding its progress toward completion of any System upgrade/construction, as required by Section 4 herein.

i. Upon written request, Grantee shall hold an annual meeting with City to coordinate construction plans of both parties for the upcoming year.

2. Ongoing Construction. Grantee shall notify City at least ten (10) days prior to the commencement of any construction in any Rights-of-Way. Grantee shall not open or disturb the surface of any Rights-of-Way or public place for any purpose without first having obtained a permit to do so in the manner provided by law. All excavation shall be coordinated with other utility excavation or construction so as to minimize disruption to the public.

3. Use of Existing Poles or Conduits.

a. Grantee shall utilize existing and/or replacement poles, conduits and other facilities whenever commercially reasonable and shall not construct or install any new, different or additional poles, conduits or other facilities on public property until the written approval of City is obtained. No location or any pole or wire-holding structure of Grantee shall be a vested interest, and such poles or structures owned by Grantee shall be removed or modified by Grantee at its own expense whenever City determines that the public convenience would be enhanced thereby.

b. The Grantee shall place its facilities underground in a manner consistent with those areas of City where existing telephone and electric services are both underground at the time of construction by Grantee. In areas where either telephone or electric utility facilities are installed aerially at the time of System construction, Grantee may install its facilities aerially; however, at such time as the existing aerial facilities are placed underground, Grantee shall likewise place its facilities underground at its sole cost, consistent with Rule 20 of the California Public Utilities Commission Rules and Regulations. If City requires utilities to

bury lines which are currently overhead, and the City financially participates in said under-grounding, then the City will provide the same cost sharing to the Grantee. For purposes of this section, under-grounding of facilities is applicable to distribution cable, wiring, utility poles and other related equipment. Above ground pedestals, distributions boxes and other components normally found above ground are not included in those facilities that may require under-grounding. In situations where under-grounding of facilities is not technically feasible, Grantee shall notify the City and request specific exemptions on a case-by-case basis.

4. Minimum Interference.

   a. Grantee shall use its best efforts to give reasonable prior notice to any adjacent private property owners who will be negatively affected or impacted by Grantee's work in the Rights-of-Way.

   b. All transmission and distribution structures, lines and equipment erected by Grantee shall be located so as to cause minimum interference with the unencumbered use of Rights-of-Way and other public places and minimum interference with the rights and reasonable convenience of property owners who adjoin any of the Rights-of-Way and public places.

   c. Grantee shall provide advance notice to any private property owner and shall obtain authorization prior to commencing work on private property.

5. Disturbance or Damage. Any and all Rights-of-Way, or public or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance, expansion, extension or reconstruction of the System shall be promptly and fully restored by Grantee, at its expense, to its original condition prior to Grantee's work, as determined by City. If Grantee shall fail to promptly perform the restoration required herein, after written request of City and reasonable opportunity to satisfy that request, City shall have the right to put the Rights-of-Way back into its original condition prior to Grantee's work. In the event City determines that Grantee is responsible for such disturbance or damage, Grantee shall be obligated to fully reimburse City for such restoration within thirty (30) days after its receipt of City's invoice thereof.

6. Temporary Relocation.

   a. At any time during the period of the Franchise, Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate or remove any of its property when, in the opinion of City, (i) the same is required by reason of traffic conditions, public safety, Rights-of-Way vacation, freeway or Rights-of-Way construction, alteration to or establishment of any Rights-of-Way or any facility within the Rights-of-Way, sidewalk, or other public place, including but not limited to, installation of sewers, drains, waterlines, power lines, traffic signal lines or transportation facilities; or (ii) a City project or activity makes disconnection, removal, or relocation necessary.

b. Grantee shall, on request of any Person holding a permit to move a building, temporarily raise or lower its wires to permit the movement of such buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting the same, and Grantee shall have the authority to require such payment in advance. Grantee shall be given not less than five (5) days advance notice to arrange such temporary wire alterations.

7. Emergency. Whenever, in case of fire or other emergency, it becomes necessary in the judgment of the City Manager, police chief, fire chief, or their delegates, to remove or damage any of Grantee's facilities, no charge shall be made by Grantee against City for restoration, repair or damages.

8. Tree Trimming. Grantee shall not trim any trees or other foliage located on private property prior to obtaining the written consent of the owner of said property. Any trimming of trees or other foliage by the Grantee in the Rights-of-Way shall not occur prior to obtaining the written consent of the City. Such trees or other foliage shall be trimmed at Grantee's own expense as may be necessary to protect its wires and facilities, subject to supervision and direction by City.

9. Protection of Facilities. Nothing contained in this section shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid damaging Grantee's facilities while performing any work connected with grading, re-grading or changing the line of any Rights-of-Way or public place or the construction or reconstruction of any sewer or water system.

10. Installation Records. Each Grantee shall keep accurate records of the location of those trunk and distribution facilities located in the Rights-of-Way and public ways and furnish them to City upon request. Grantee shall cooperate with City to furnish such information in an electronic read-only mapping format, if possible compatible with the then-current City electronic mapping format. Upon completion of new or relocation construction of underground facilities in the Rights-of-Way and public ways, Grantee shall provide City with records in an electronic read-only format, if possible compatible with the then-current City electronic mapping format showing the location of the new underground and above ground trunk and distribution facilities. To the extent possible under applicable law, the City shall protect the Grantees plans, designs and other information marked by the Grantee as proprietary or trade secrets.

11. Locating Facilities.

a. If, during the design process for public improvements, City discovers a potential conflict with proposed construction, Grantee shall either: (a) locate and, if necessary, expose its facilities in conflict or (b) use a location service under contract with City to locate or expose its facilities. Grantee is obligated to furnish the location information in a timely manner, but in no case longer than thirty (30) days.

b. City reserves the prior and superior right to lay, construct, erect, install, use, operate, repair, replace, remove, relocate, re-grade, widen, realign, or maintain any Rights-of-Way and public ways, aerial, surface, or subsurface improvement, including but not limited to water mains, traffic control conduits, cable and devices, sanitary or storm sewers, subways, tunnels, bridges, viaducts, or any other public construction within the Rights-of-Way of City limits.

12. City's Rights.

a. Nothing in this Franchise shall be construed to prevent City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Right-of-Way; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.

13. Facilities in Conflict. If, during the course of a project, City determines Grantee's facilities are in conflict, the following shall apply:

a. Prior to City Notice to Proceed to Contractor: Grantee shall, within a reasonable time, but in no event exceeding three (3) months, remove or relocate the conflicting facility. This time period shall begin running upon receipt by Grantee of written notice from City. However, if both City and Grantee agree, the time frame may be extended based on the requirements of the project.

b. Subsequent to City Notice to Proceed to Contractor: City and Grantee will immediately begin the coordination necessary to remove or relocate the facility. Removal or relocation is to begin no later than seventy-two (72) hours, if practicable, after written notification from City of the conflict.

14. Relocation Delays.

a. In the event City becomes aware of a potential delay involving Grantee's facilities, City shall promptly notify Grantee of this potential delay. The Grantee shall make every effort to relocate facilities in accordance with Section 13 b.

15. Interference with City Facilities. The Installation, use and maintenance of the Grantee's facilities within the Rights-of-Way and public ways authorized herein shall be in such a manner as not to interfere with City's placement, construction, use and maintenance of its Rights-of-Way and public ways, Rights-of-Way lighting, water pipes, drains, sewers, traffic signal systems or other City systems that have been, or may be, installed, maintained, used or authorized by City.

16. Interference with Utility Facilities. Grantee agrees not to install, maintain or use any of its facilities in such a manner as to damage or interfere with any existing facilities of another utility located within the Rights-of-Way and public ways of City and agrees to relocate its facilities, if necessary, to accommodate another facility relocation. Nothing in this section is meant to limit any rights Grantee may have under Applicable Laws to be

compensated for the cost of relocating its facilities from the utility that is requesting the relocation.

17. Collocation. To maximize public and employee safety, to minimize visual clutter of aerial plant, and to minimize the amount of trenching and excavation in and along City Rights-of-Way and sidewalks for underground plant, Grantee shall make every commercially reasonable effort to collocate compatible facilities within the Rights-of-Way subject to the engineering requirements of the owners of utility poles and other facilities.

18. Safety Requirements.

    a. Grantee shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage or injuries.

    b. Grantee shall install and maintain its System and other equipment in accordance with City's codes and the requirements of the National Electric Safety Code and all other applicable FCC, state and local regulations, and in such manner that they will not interfere with City communications technology related to health, safety and welfare of the residents.

    c. Cable System structures, and lines, equipment and connections in, over, under and upon the Rights-of-Way of City, wherever situated or located, shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of City or any Person.

SECTION 4.
DESIGN PROVISIONS

1. System Construction: Minimum Channel Capacity.

    a. Grantee shall develop, construct, operate and maintain for the term of this franchise a System providing a minimum capability of delivering 70 analog channels.

    b. All final programming decisions remain the discretion of Grantee in accordance with this Franchise, provided that Grantee notifies City and Subscribers in writing thirty (30) days prior to any Channel additions, deletions, or realignments, and further subject to Grantee's signal carriage obligations hereunder and pursuant to 47 U.S.C. § 531-536, and further subject to City's rights pursuant to 47 U.S.C. § 545. Location and relocation of the PEG Channels shall be governed by Section 6 and Exhibit A.

2. Additional Construction and New Installations. Any additional construction or new installations will comply with the technical specifications referenced in this Section and will comply with applicable City and State building and safety codes.

3. Interruption of Service. Grantee shall interrupt Service only for good cause and for the shortest time possible. Such interruption shall occur during periods of minimum use of the System. Subscriber refunds for service interruption will be in accordance with Section 5 of this franchise agreement.

4. Emergency Alert System. Franchisee must install and maintain an emergency alert system in accordance with applicable federal and state law that can override audio and video on all Channels to provide an emergency alert to all Subscribers in the City.

5. Technical Standards. The technical standards used in the operation of the System shall comply, at minimum, with the technical standards promulgated by the FCC relating to Cable Systems pursuant to Title 47, Section 76, Subpart K of the Code of Federal Regulations, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference

6. Special Testing.

   a. City shall have the right to inspect and test all construction or installation work performed pursuant to the provisions of the Franchise. In addition, City may require special testing of a location or locations within the System as desired at any time during the term of this Franchise. Demand for such special tests may be made on the basis of complaints received or other evidence indicating an unresolved controversy or noncompliance or for routine verification of Grantee's compliance with FCC technical standards. City shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to Grantee or to the Subscribers caused by such testing.

   b. Before ordering such tests, Grantee shall be afforded thirty (30) days advance written notice. City shall meet with Grantee prior to requiring special tests to discuss the need for such and, if possible, visually inspect those locations which may be the focus of concern. Grantee shall participate and cooperate in such testing and shall not assess City or Subscribers any additional fees or costs associated with time or labor Grantee may incur as a result of its participation in such testing.

7. FCC Reports. The results of any tests required to be filed by Grantee with the FCC shall upon written request of City also be filed with City or its designee within ten (10) days of the conduct of such tests.

8. Annexation. Upon the annexation of any additional land area by the City, if the annexed area is not currently served by a cable operator it will be subject to the other provisions of this Section 4. If the annexed area is served by a cable operator, Grantee has the option to extend its Cable System to the newly annexed area if Grantee determines that it is economically feasible to do so. Upon the annexation of any additional land area by the City, the annexed area shall be subject to all the terms of this Franchise upon sixty (60) days of written notification by the City to Grantee. A cable operator other than Grantee whose Cable System already passes homes in an annexed area shall not extend its Cable

System beyond those homes which it passes at the time the annexation occurs unless it otherwise obtains a franchise from the City.

9. Line Extension.

a. Grantee shall construct and operate its Cable System so as to provide Service to all parts of its Franchise area as provided in this Franchise and having a density equivalent of forty (40) residential units per one-(1) cable mile of System, as measured from the nearest tap on the Cable System.

b. Where the density is less than that specified above, Grantee shall inform Persons requesting Service of the possibility of paying for Installation or a line extension and shall offer to provide them with a free written estimate of the cost, which shall be provided within fifteen (15) working days of such a request. The charge for Installation or extension for each Person requesting Service shall not exceed a pro rata share of the actual cost of extending the Service.

c. Any residential and/or commercial unit located within one hundred fifty (150) feet of the nearest tap on Grantee's System shall be connected to the System at the Standard Installation charge. Grantee shall, upon request by any potential Subscriber residing in City beyond the one hundred fifty (150) foot limit, extend Service to such Subscriber provided that the Subscriber shall pay the net additional costs.

d. Under Normal Operating Conditions, if Grantee cannot perform Installations within the times specified in applicable customer standards, the Subscriber may request and is entitled to receive a credit equal to the charge for a Standard Installation. For any Installation that is not a free Installation or a Standard Installation, Grantee shall provide the Subscriber with a written estimate of all charges within seven (7) days of a request by the Subscriber. Failure to comply will subject Grantee to appropriate enforcement actions. This section does not apply to the introduction of new products and services when Grantee is utilizing a phased introduction.

10. Lockout Device. Upon the request of a Subscriber, Grantee shall make available by sale or lease a Lockout Device allowing Channels on the System to be blocked.

SECTION 5.
SERVICE PROVISIONS

1. Regulation of Service Rates. City may regulate rates for the provision of Cable Service, equipment, or any other communications service provided over the System in accordance with applicable federal law, in particular 47 C.F.R. Part 76 subpart N. In the event the City chooses to regulate rates it shall, in accordance with 47 C.F.R. § 76.910, obtain certification from the FCC, if applicable. The City shall follow all applicable FCC rate regulations and shall ensure that appropriate personnel are in place to administer such

regulations. City reserves the right to regulate rates for any future Services to the extent permitted by law.

2. Non-Standard Installations. Grantee shall install and provide Cable Service to any Person requesting other than a Standard Installation provided that said Cable Service can meet FCC technical specifications and all payment and policy obligations are met.

3. Sales Procedures. Grantee shall comply with all lawful state and local consumer protection statutes and ordinances. Grantee shall have the right to market door-to-door during reasonable hours consistent with local ordinances and regulation.

4. Consumer Protection and Service Standards. Grantee shall maintain service and bill payment facilities as per item 8 of this Section. The Grantee shall comply with the standards and requirements for customer service set forth below and shall comply with all applicable regulations relating to customer service obligations, including any amendments to 47 C.F.R. § 76.309 during the term of this Franchise, that impose higher or additional customer service standards on a cable operator, and shall not contest any decision by the City to enforce the standards set forth herein or such other standards in accordance with Applicable Laws.

   a. Cable System office hours and telephone availability:

      i. Grantee will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week.

         (1) Trained Grantee representatives will be available to respond to customer telephone inquiries during Normal Business Hours.

         (2) After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained Grantee representative on the next business day.

      ii. Under Normal Operating Conditions, telephone answer time including wait time, shall not exceed thirty (30) seconds when the connection is made. These standards shall be met no less then ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.

      iii. Grantee shall acquire equipment to measure compliance with the telephone answering standards above.

      iv. Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.

v. Customer service center and bill payment locations will be open at least during Normal Business Hours.

b. Installations, Outages and Service Calls. Under Normal Operating Conditions, each of the following standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:

i. Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard" Installations are those that are located up to one hundred fifty (150) feet from the existing distribution system.

ii. Excluding conditions beyond the control of Grantee, as defined in Section 12.8 Force Majeure, Grantee will begin working on "Service Interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. Grantee must begin actions to correct other Service problems the next business day after notification of the Service problem.

iii. The "appointment window" alternatives for Installations, Service calls, and other Installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. (Grantee may schedule Service calls and other Installation activities outside of Normal Business Hours for the express convenience of the customer.)

iv. Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

v. If Grantee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted prior to the time of the scheduled appointment. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

c. Communications between Grantee and Subscribers:

i. Notifications to Subscribers:

(1) Grantee shall provide written information on each of the following areas at the time of Installation of Service, at least annually to all Subscribers, and at any time upon request:

(a) Products and Services offered;

(b) Prices and options for programming Services and conditions of subscription to programming and other Services;

(c) Installation and Service maintenance policies;

(d) Instructions on how to use the Cable Service;

(e) Channel positions of the programming carried on the System; and

(f) Billing and complaint procedures, including the address and telephone number of the City.

(2) Subscribers will be notified of any changes in rates, programming Services or Channel positions a minimum of thirty (30) days in advance of such changes if the changes are within the control of the Grantee. In addition, the Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in the other information required by this Section 5.4(c)(i)(1). Grantee shall not be required to provide prior notice of any rate changes as a result of a regulatory fee, Franchise Fee, or other fees, tax, assessment or charge of any kind imposed by any federal agency, state or City on the transaction between the operator and the Subscriber.

(3) Grantee will provide an on-line channel line up or "TV Guide" for all subscribers (analog and digital) on an available channel.

ii. Billing:

(1) Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium Service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(2) In case of a billing dispute, the Grantee must respond to a written complaint from a Subscriber within thirty (30) days.

iii. Refunds: Refund checks will be issued promptly, but no later than either:

(1) The Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(2) The return of the equipment supplied by Grantee if Service is terminated.

iv. Credits: Credits for Service will be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.

Grantee shall provide City with a quarterly compliance report, which shall describe in detail Grantee's compliance with each term of this section. This report shall include total calls received and total reports of service outages.

5. Subscriber Contracts. Upon written request, Grantee shall supply to the City any standard form residential Subscriber contract utilized by Grantee. If no such written contract exists, Grantee shall file with the City a document completely and concisely stating the length and terms of the Subscriber contract offered to customers. The length and terms of any Subscriber contract(s) shall be available for public inspection during Normal Business Hours. A list of Grantee's current Subscriber rates and charges for Cable Service shall be maintained on file with City and shall be available for public inspection.

6. Refund Policy.

   a. Upon request, Subscribers shall be credited pro rata for service interruptions in accordance with the Grantees refund policy. The City will be notified of any changes in the refund policy subsequent to the adoption of this franchise.

   b. In the event a Subscriber establishes or terminates Service and receives less than one (1) full month of Service, Grantee shall prorate the monthly rate on the basis of the number of days in the period for which Service was rendered to the number of days in the billing. Refund checks will be issued promptly, but no later than thirty (30) days after the return of the equipment supplied by the Grantee if Cable Service is terminated.

7. Late Fees. For purposes of this section any assessment, charge, cost, fee or sum, however characterized, that the Grantee imposes upon a Subscriber for late payment of a bill is a late fee, and shall be applied in a manner consistent with State Law.

8. Local Service Policy.

   a. Grantee shall maintain a convenient location within the City for subscriber inquiries, bill payment and equipment transfers until such a time that these services are no longer required. Subsequently a location within a reasonable distance of the City shall be maintained for receiving subscriber inquiries, bill payments, and other services. The location shall be open a minimum of forty (40) hours per week. In addition, Grantee shall maintain a drop box within the Service Area for receiving subscriber payments after hours.

   b. Payments at Grantee's drop box location shall be deemed received on the date such payments are picked up by Grantee which shall occur no less than twenty-four (24) hours after each and every due date for Subscriber bills.

SECTION 6.
ACCESS CHANNEL(S) PROVISIONS

1. Grantee Support for PEG Access. Grantee shall provide the following support for PEG access usage within the Service Area:

a. Provision of the Channels designated in Exhibit A of this Agreement for local PEG programming and access use at no charge in accordance with the requirements of Exhibit A.

b. Capital support of PEG programming to the extent specified in Exhibit A of this Agreement.

c. Provision of free public building Installation and Cable Service as specified in Exhibit C.

2. Compliance with Federal Law. Grantee and City agree that the PEG access support fee referenced in Exhibit A are not intended to be deemed to be "Franchise Fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. §542), and such obligations are not intended to be deemed to be (i) "payments in kind" or any involuntary payments chargeable against the Franchise Fees to be paid to the City by Grantee pursuant to Section 8 hereof or (ii) part of the Franchise Fees to be paid to City by Grantee pursuant to Section 8 hereof. In accordance with applicable Federal Law, Grantee shall itemize the PEG fee on subscriber billing statements.

SECTION 7.
OPERATION AND ADMINISTRATION PROVISIONS

1. Administration of Franchise. The City shall have continuing regulatory jurisdiction and supervision over the System and the Grantee's operation under the Franchise; provided, however, that the City Council shall retain the sole authority to take enforcement action pursuant to this Franchise.

2. Franchise Fee.

a. During the term of the Franchise, Grantee shall pay quarterly to City a Franchise Fee in an amount equal to five percent (5%) of its quarterly Gross Revenues, or such other amounts as are subsequently permitted by federal statute.

b. Any payments due under this provision shall be payable quarterly. The payment shall be made within forty-five (45) days of the end of each of Grantee's fiscal quarters together with a report showing the basis for the computation. In the event that a Franchise Fee payment or other sum due is not received by the City on or before the date due, or is underpaid, Grantee shall pay in addition to the payment, or sum due, interest from the due date at an annual rate equal to the maximum rate permitted under state law, or twelve percent (12%) if no such rate is legally specified or as otherwise allowed by applicable law.

c. All amounts paid shall be subject to audit and recomputation (but no more than one audit within in a 36-month period) by City and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount. In the event the City should conduct a review of Grantee's books and

records pursuant to Section 8.6 of this Franchise and discover that Grantee has underpaid Franchise Fee payments by five percent (5%) or more, Grantee shall assume all reasonable documented costs of such audit in an amount, not to exceed $5,000.

d. The Grantee shall provide during any audit, the methodology used to allocate revenues for franchise fee purposes for "Bundled Services" or other discounted rate programs.

e. Discounted Rates. To the extent discounts reduce revenues includable for purposes of calculating franchise fees, the Grantee may not unfairly or unlawfully allocate discounts for bundled services for the purpose of evading payment of franchise fees to the City.

3. Not Franchise Fees. Grantee acknowledges and agrees that the Franchisee Fees payable by Grantee to City pursuant to this section shall take precedence over all other payments, contributions, services, equipment, facilities, support, resources or other activities to be provided or performed by Grantee pursuant to this Franchise and that the Franchise Fees provided for in this section of this Franchise shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes of general applicability and other fees and charges which Grantee shall be required to pay to City and/or to any other governmental authority, all of which shall be separate and distinct obligations of Grantee.

4. Proprietary Information. Notwithstanding anything to the contrary set forth in this Section, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Grantor agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to those employees, representative, and agents of the Grantor and who agree to maintain the confidentiality of all such information. The Grantee shall not be required to provide Customer information in violation of Section 631 of the Cable Act or any other applicable federal or state privacy law. For purposes of this Section, the terms "proprietary or confidential" include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Grantee to be competitively sensitive. In the event that the Grantor receives a request under a state "sunshine", public records or similar law for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the Grantor shall notify Grantee of such request and cooperate with Grantee in opposing such request

5. Reports and Maps to be Filed with City.

a. City and Grantee shall mutually agree, at the times and in the form prescribed, on such other reasonable reports with respect to Grantee's operations pursuant to this Franchise.

b. Upon written request, Grantee shall provide the City information on the Grantees cable plant and facilities necessary to de-conflict other uses of the Public-Right-of way. Upon written request, the Grantee and the City shall meet to determine a mutually agreeable format for such data.

6. Periodic Evaluation.

a. City may request evaluation sessions at any time during the term of this Franchise upon thirty (30) day written notice to Grantee.

b. Topics which may be discussed at any evaluation session may include System performance, access channels and facilities, Subscriber basic rates, and customer complaints.

SECTION 8.
GENERAL FINANCIAL AND INSURANCE PROVISIONS

1. Performance Bond.

a. At the time of acceptance of this Franchise, Grantee shall deliver to City a performance bond, in the amount of Fifty Thousand and No/100 Dollars ($50,000.00).

b. The performance bond shall provide that funds will be paid to City, upon written demand of City, and in an amount solely determined by City in payment for penalties charged pursuant to this section, in payment for any monies owed by Grantee to City or any Person pursuant to its obligations under this Franchise, or in payment for any damage incurred by City or any Person as a result of any acts or omissions by Grantee pursuant to this Franchise.

c. In addition to recovery of any monies owed by Grantee to City or any Person or damages to City or any Person as a result of any acts or omissions by Grantee pursuant to the Franchise, City in its sole discretion may charge to and collect from the Performance Bond the penalties enumerated below.

2. Liquidated Damages.

a. Because it may be difficult to calculate the harm to the Franchising Authority in the event of a breach of this Franchise Agreement by Grantee, the parties agree to liquidated damages as a reasonable estimation of the actual damages. To the extent that the Franchising Authority elects to assess liquidated damages as provided in this Agreement and such liquidated damages have been paid, such damages shall be the Franchising Authority's sole and exclusive remedy. Nothing in this Section is intended to preclude the Franchising Authority from exercising

any other right or remedy with respect to a breach that continues past the time the Franchising Authority stops assessing liquidated damages for such breach.

b. Prior to assessing any liquidated damages, the Franchising Authority shall mail to the Grantee a written notice by certified or registered mail of the alleged violation and the proposed liquidated damage, specifying the violation at issue. The Grantee shall have forty-five (45) days from the date of receipt of the written notice to cure or commence to cure, as is appropriate depending on the nature of the alleged violation, or to file a written response refuting the alleged violation or explaining why additional time for cure is necessary. In the case of breaches of requirements measured on a monthly, quarterly or longer period (such as customer service standards), Grantee's cure period shall be no less than one such period.

c. The Franchising Authority may not assess any liquidated damage if the Grantee has reasonably responded to the complaint or cured or commenced to cure, as may be appropriate, the violation within a reasonable time frame not to exceed forty-five (45) days following receipt of written notice from the Franchising Authority, unless some other cure period is approved by the Franchising Authority. In the event Grantee fails to cure or commence to cure, or fails to refute the alleged breach, the Franchising Authority may assess liquidated damages and shall inform Grantee in writing of the assessment. Grantee shall have thirty (30) days to pay the damages.

d. The first day for which liquidated damages may be assessed, if there has been no cure after the end of the applicable cure period, shall be the day after the end of the applicable cure period, including any extension of the cure period granted by the Franchising Authority.

e. Grantee may appeal (by pursuing judicial relief or other relief afforded by the Franchising Authority) any assessment of liquidated damages within thirty (30) days of receiving written notice of the assessment. Grantee's obligation to pay the liquidated damages assessed shall be stayed pending resolution of the appeal.

f. In no event may liquidated damages be assessed for a time period exceeding one hundred twenty (120) days. If after that amount of time Grantee has not cured or commenced to cure the alleged breach to the satisfaction of the Franchising Authority, the Franchising Authority may pursue all other remedies.

g. Pursuant to the requirements outlined in the foregoing Sections, liquidated damages shall not exceed the following amounts:

    i. For failure to provide data, documents, reports and information as required by this Franchise fifty dollars ($50) per day per each separate violation not to exceed $2,000 for any single violation.;

ii. For failure to test, analyze and report on the performance of the Cable System as required by this Ordinance, one hundred dollars ($100) per day not to exceed $5,000 for any violations;

iii. For failure to comply with PEG Access requirements outlined in Section 6, two hundred and fifty dollars ($250) per day not to exceed $7,000 for any violation.;

iv. For violation of customer service standards to include stated standards for installations, correction of service interruptions and failure to provide stated credits, the penalty shall be two hundred and fifty dollars ($250.00) per occurrence.

v. For failure to answer Subscriber calls as required by Section 5 of the Cable Ordinance in, any quarter where the Grantee performs equal to or greater than eighty-five (85%) and less than ninety percent (90%), the Grantee shall pay the Grantor five hundred dollars ($500); in any quarter where the Grantee performs equal to or greater than seventy-five percent. (75%) and less than eighty-five percent (85%), the Grantee shall pay the Grantor one-thousand dollars ($1,000); in any quarter where the Grantee performs equal to or greater than sixty-five percent (65%) and less than seventy-five percent (75%), the Grantee shall pay the Grantor three-thousand dollars ($3,000); and in any quarter where the Grantee performs less than sixty-five percent (65%), the Grantee shall pay the Grantor five thousand dollars ($5,000).

3. Liability Insurance.

a. Throughout the term of this Franchise Agreement, the Grantee shall, at its own cost and expense, maintain Comprehensive General Liability Insurance and provide the Franchising Authority certificates of insurance designating the Franchise Authority and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds and demonstrating that the Grantee has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of One Million Dollars ($1,000,000.00) for bodily injury or death to any one person, and Three Million Dollars ($3,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and Three Million Dollars ($3,000,000.00) for property damage resulting from any one accident. Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the Franchising Authority. The Grantee shall provide workers' compensation coverage in accordance with applicable law. The Grantee shall indemnify and hold harmless the Franchising Authority from any works compensation claims to which the Grantee may become subject during the term of this Franchise Agreement.

b. Grantee shall submit to City documentation of the required insurance, including a copy of the policy showing that the City is an additional insured, as well as all properly executed endorsements.

4. Indemnification.

a. The Grantee shall indemnify, defend and hold harmless the Franchising Authority, its officers, employees, and agents from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that arise out of the Grantee's construction, operation, maintenance or removal of the Cable System, including, but not limited to, reasonable attorneys' fees and costs, provided that the Franchising Authority shall give the Grantee written notice of its obligation to indemnify and defend the Franchising Authority within ten (10) business days of receipt of a claim or action pursuant to this Section. If the Franchising Authority determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Franchising Authority.

5. Grantee's Insurance.

Grantee shall not commence any Cable System reconstruction work or permit any subcontractor to commence work until all insurance required under this Franchise has been obtained. Said insurance shall be maintained in full force and effect until the expiration of this Franchise.

a. In order for City to assert its rights to be indemnified, defended, and held harmless, City must, with respect to each claim:

i. Promptly notify Grantee in writing of any claim or legal proceeding which gives rise to such right;

ii. Afford Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and

iii. Fully cooperate with reasonable requests of Grantee, at Grantee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to subparagraph (ii) above.

SECTION 9.
TRANSFER, CHANGE OF CONTROL OR REVOCATION OF FRANCHISE

1. Neither the Grantee nor any other Person may transfer the Cable System or the Franchise without the prior written consent of the Franchising Authority, which consent shall not be unreasonably withheld or delayed. No change in control of the Grantee, defined as an acquisition of 50% or greater ownership interest in Grantee, shall take place without the prior written consent of the Franchising Authority, which consent shall not be

unreasonably withheld or delayed. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation. Within thirty (30) days of receiving a request for consent, the Franchising Authority shall, in accordance with FCC rules and regulations, notify the Grantee in writing of the additional information, if any, it requires to determine the legal, financial and technical qualifications of the transferee or new controlling party. If the City does not act on the matter within one hundred twenty (120) days after receiving such request, consent shall be deemed given.

2. The Grantee reserves all Revocation Rights as defined under applicable Federal Laws and regulation. Such applicable law will define the process to be used by the Grantee.

SECTION 10.
PROTECTION OF INDIVIDUAL RIGHTS

1. Discriminatory Practices Prohibited. Grantee shall not deny Service, deny access, or otherwise discriminate against Subscribers or general citizens on the basis of race, color, religion, national origin, sex, age, status as to public assistance, affectional preference, or disability. Grantee shall comply at all times with all other Applicable Laws, and all executive and administrative orders relating to nondiscrimination.

2. Subscriber Privacy. The Grantee shall comply with all applicable federal and state privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto.

SECTION 11.
UNAUTHORIZED CONNECTIONS AND MODIFICATIONS

1. Unauthorized Connections or Modifications Prohibited. It shall be unlawful for any firm, Person, group, company, corporation, or governmental body or agency, without the express consent of the Grantee, to make or possess, or assist anybody in making or possessing, any unauthorized connection, extension, or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of the System or receive Services of the System without Grantee's authorization.

2. Removal or Destruction Prohibited. It shall be unlawful for any firm, Person, group, company, or corporation to willfully interfere, tamper, remove, obstruct, or damage, or assist thereof, any part or segment of the System for any purpose whatsoever.

3. Penalty. Any firm Person, group, company, or corporation found guilty of violating this section may be fined not less than Twenty and No/100 Dollars ($20.00) and the costs of the action nor more than Five Hundred and No/100 Dollars ($500.00) and the costs of the

action for each and every subsequent offense. Each continuing day of the violation shall be considered a separate occurrence.

SECTION 12.
MISCELLANEOUS PROVISIONS

1. Franchise Renewal. Any renewal of this Franchise shall be performed in accordance with Applicable Laws. The term of any renewed Franchise shall be limited to a period not to exceed fifteen (15) years.

2. Work Performed by Others. All applicable obligations of this Franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this Franchise, however, in no event shall any such subcontractor or other performing work obtain any rights to maintain and operate a System or provide Cable Service. Grantee shall provide notice to City of the name(s) and address(es) of any entity, other than Grantee, which performs substantial services pursuant to this Franchise.

3. Amendment of Franchise Ordinance. Grantee and City may agree, from time to time, to amend this Franchise. Such written amendments may be made subsequent to a review session pursuant to Section 7.6 or at any other time if City and Grantee mutually agree that such an amendment is required due to changes in federal, state or local laws; provided, however, nothing herein shall restrict City's exercise of its police powers.

4. Compliance with Federal, State and Local Laws.

   a. If any federal or state law or regulation shall require or permit City or Grantee to perform any service or act or shall prohibit City or Grantee from performing any service or act which may be in conflict with the terms of this Franchise, then as soon as possible following knowledge thereof, either party shall notify the other of the point in conflict believed to exist between such law or regulation. Grantee and City shall conform to state and federal laws and regulations and rules regarding cable communications as they become effective.

   b. If any term, condition or provision of this Franchise or the application thereof to any Person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to Persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and complied with provided the loss of the invalid or unenforceable clause does not substantially alter the agreement between the parties. In the event such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantee and City.

5. Nonenforcement by City. Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure or delay of City to enforce prompt compliance. City may only waive its rights hereunder by expressly so stating in writing. Any such written waiver by City of a breach or violation of any provision of this Franchise shall not operate as or be construed to be a waiver of any subsequent breach or violation.

6. Rights Cumulative. All rights and remedies given to City by this Franchise or retained by City herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to City, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by City and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

7. Grantee Acknowledgment of Validity of Franchise. Grantee acknowledges that it has had an opportunity to review the terms and conditions of this Franchise and that under current law Grantee believes that said terms and conditions are not unreasonable or arbitrary, and that Grantee believes City has the power to make the terms and conditions contained in this Franchise.

8. Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (include termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Cable System, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's cable or equipment is attached, as well as availability of materials or qualified labor to perform the work necessary.

SECTION 13.
PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS

1. Publication, Effective Date. This Franchise shall be published in accordance with applicable local and state law. The effective date of this Franchise shall be the date of acceptance by Grantee in accordance with the provisions of Section 13.2.

2. Acceptance.

a. Grantee shall accept this Franchise within thirty (30) days of its enactment by the City Council, unless the time for acceptance is extended by City. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes; provided, however, this Franchise shall not be effective until all City ordinance adoption procedures are complied with and all applicable timelines have run for the adoption of a City ordinance. In the event acceptance does not take place, or should all ordinance adoption procedures and timelines not be completed, this Franchise and any and all rights granted hereunder to Grantee shall be null and void.

b. Upon acceptance of this Franchise, Grantee and City shall be bound by all the terms and conditions contained herein.

c. Grantee shall accept this Franchise in the following manner:

i. This Franchise will be properly executed and acknowledged by Grantee and delivered to City.

ii. With its acceptance, Grantee shall also deliver any grant payments, performance bond and insurance certificates, and guaranties, as required herein, that have not previously been delivered.

Passed and adopted by the City Council this_____ day of _____, 2005.

ATTEST: CITY OF MILPITAS, CALIFORNIA

By:_____ By:_____

Its:_____ Its: Mayor

ACCEPTED: This Franchise is accepted, and we agree to be bound by its terms and conditions.

CALIFORNIA/COLORADO/FLORIDA/OREGON, INC.

Date: _____, _____ 2005 By: _____

Its: _____

SWORN TO BEFORE ME this
__ day of _____, 2005.

_____
NOTARY PUBLIC

EXHIBIT A – GRANTEE COMMITMENT TO PEG ACCESS FACILITIES AND EQUIPMENT

1. PUBLIC, EDUCATIONAL AND GOVERNMENT (PEG) ACCESS CHANNELS

Grantee shall make three (3) video Channels available exclusively for PEG use ("PEG Channels"). The three (3) Channels shall be made available by Grantee for shared PEG access use in accordance with applicable law. One (1) Channel is currently being provided and a second will be made available upon the City's request with 90 days written notice. One (1) additional Channel for PEG use (for a total of three (3) PEG Channels) shall be made available with the following triggers are met: the existing PEG Channels must be programmed at least eight (8) hours a day with non-repetitive, locally-produced programming, Monday through Saturday, for a minimum of six (6) consecutive weeks. The City must provide Grantee with written, detailed documentation evidencing that the usage meets the threshold requirements for each channel. Grantee shall have 120 days to provide the requested additional capacity. Once the threshold is met and the additional capacity given, each of the initial PEG Channels must maintain the threshold requirement. If any of the initial PEG Channels fail to meet the threshold for four (4) consecutive months, the additional PEG capacity may by reclaimed by Grantee upon sixty (60) calendar days written notice. Under no circumstances shall the City lose the right to its initial PEG capacity.

2. PEG OPERATIONS

City may, in its sole discretion, negotiate agreements with neighboring jurisdictions served by the same Cable System, educational institutions or others to share the expenses of supporting the PEG Channels. Throughout the term of this Franchise Grantee shall provide City with an audio feed of either a local radio station or music service to provide background sound for the City's character generated bulletin board to be cablecast on one (1) or more of the PEG Channels.

3. RELOCATION OF PEG CHANNELS

Grantee shall provide City and all Subscribers with at least sixty (60) days prior written notice of any legally required relocation. In the event any PEG access Channel(s) is relocated, Grantee shall reimburse City up to Two Thousand and Five Hundred Dollars ($2,500.00) for all reasonable costs associated with such move including change of letterhead, promotion of new Channel location and promotional spots for the new location and inform Subscribers of the new Channel location.

4. PROMOTION OF PEG ACCESS

To the extent permitted by Grantee's billing process, Grantee may allow the City to place bill stuffers in Grantee's Subscriber statements at a cost to the City not to exceed Grantee's cost, no less frequently than once per year upon the written request of the City and at such times that the placement of such materials would not materially and adversely effect Grantee's cost for the production and mailing of such statements. The City agrees to pay Grantee in advance for the actual cost of such bill stuffers. Grantee may also make available PEG access information provided by City in Subscriber packets at the time of Installation and at the counter in the System's business office serving the Service Area. Grantee shall also distribute, at no charge to City, through advertising insertion equipment, fifteen (15) weekly promotional and awareness commercial spots, on a "run of schedule" basis, produced at the City's cost and submitted by the City in a format compatible with such advertising insertion equipment once Grantee has acquired and activated such capability. Grantee shall also include a listing of the known programming to be cablecast on PEG access Channels in or on any electronic program guide of Services for the Cable System

6. PEG ACCESS SUPPORT

Grantee shall provide City with capital grants, to be used for Public, Educational, and Government access capital expenses according to the following schedule: upon acceptance of franchise, $50,000 for construction of a PEG facility and $240,000 for acquisition equipment to create a PEG studio in a partnership with the Milpitas Unified School District; an annual technology grant of $50,000 in the years 2005, 2006, 2007, 2008 and 2009 to be used to meet the capital needs of the Milpitas Unified Schools District's educational access facility. Total PEG capital grants to total $540,000. Any and all payments by Grantee to City in support of PEG access programming shall not be deemed "Franchise Fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. Section 542). The Grantee shall reserve its right to pass the capital grant through to customers as a line-item "PEG Fee" on subscriber billing statements.

Grantee will relocate the current head end feed for the Milpitas Unified School District from the District Board Room to Building 800.

EXHIBIT B - SERVICE TO PUBLIC AND PRIVATE BUILDINGS

1. Grantee will provide the following services to Public facilities:

    a. Whenever Grantee's cable lines are within 150 feet, a single service cable shall be provided without any charge for connection and without monthly Service charge for one (1) Standard Cable Service to a demarcation point within the institution nearest to the cable distribution plant. Interior wiring for additional outlets will be provided by the organization. Service will be provided to the following facilities:

        i. City Hall
        ii. Fire Stations 1,2,3,4
        iii. Public Works/Police Building
        iv. Sports Center
        v. Cracolice Building
        vi. New Senior Center
        vii. New Library
        viii. Public Schools